

**BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001**

Complaint on Changes in Retail Hours

Docket No. C2014-1

**DOUGLAS F. CARLSON
ANSWER IN OPPOSITION
TO POSTAL SERVICE MOTION TO DISMISS**

May 27, 2014

On April 30, 2014, I filed a complaint concerning Postal Service policy and practice for changes in retail hours.¹ On May 20, 2014, the Postal Service filed a motion to dismiss my complaint.²

The Postal Service's motion fails to provide any basis for dismissing my complaint.

I. INTRODUCTION

The Postal Service's motion begins with an attempt to belittle my complaint as an "attempt by a single individual to influence postal operations in the San Francisco District[.]" The Postal Service should direct its concerns to Congress, not to this Commission in this proceeding, because Congress drafted and enacted 39 U.S.C. § 3662(a) to provide "[a]ny interested person" — with "person" written in the singular — the opportunity to lodge a complaint with the Commission if that person "believes" that the Postal Service is not operating in conformance with any of a variety of statutory requirements. Even the legislative history that the Postal Service cited elsewhere in its motion — a statement from

¹ Douglas F. Carlson Complaint on Changes in Retail Hours and Emergency Request for Injunctive Relief, filed April 30, 2014.

² United States Postal Service Motion to Dismiss the Complaint on Changes in Retail Hours ("Motion"), filed May 20, 2014.

Senator Collins — expresses the strong desire of Congress to provide a remedy through the Commission complaint process for any mailer who believes that the Postal Service is providing services to the mailer in a manner that violates the Postal Accountability and Enhancement Act.³

After expressing its general opinion of this complaint and, by implication, the complaint process, the Postal Service asserts the following points:

- The Commission should adopt the Supreme Court’s requirements for notice pleading when interpreting Commission rule 39 C.F.R. § 3030.10;
- The complaint fails to allege sufficient facts to support the claim that the changes to section 126.42 of the *Postal Operations Manual* that the Postal Service implemented in 2012 constitute a change in the nature of postal services that generally affected service on a nationwide or substantially nationwide basis within the meaning of 39 U.S.C. § 3661(b);
- The complaint does not allege a violation of section 3661(a) due to a “flawed statement of law”;
- The complaint fails to allege sufficient facts to support the claim that the 2012 revisions to POM section 126.42 violated 39 U.S.C. § 3661(a);
- The Commission does not have the authority to hear complaints about violations of certain provisions of the POM;
- The complaint meets the Commission’s criteria for rate or service inquiries pursuant to 39 C.F.R. § 3030.13 and should be referred to that process.

³ Motion at 10, quoting 152 Cong. Rec. S767 (daily ed. Feb. 7, 2006).

II. ARGUMENT

The grounds that the Postal Service asserted for dismissing this complaint have no merit. Therefore, the Commission should deny the Postal Service's motion.

A. THE REVISION TO POM § 126.42 REPRESENTS A CHANGE IN THE NATURE OF POSTAL SERVICES.

The changes that the Postal Service implemented to POM § 126.42 in 2012 are profound. As my complaint explains in paragraphs 2–4, the Postal Service revised the POM to remove the following language:

If the needs of the community have changed, the postmaster should use recent Window Operations Survey (WOS) reports as well as customer feedback to determine if a change in service hours should be considered. If the postmaster determines a change in service hours are warranted, he/she must obtain approval.

Postal Bulletin 22289 at 9 (7-15-10).

Under the former language quoted above, changes in the needs of the community provided the proper impetus for a change in retail service hours. After this revision, the Postal Service apparently can change retail hours for any reason — or for no reason at all. Moreover, Postal Service policy no longer encourages postmasters to consider customer feedback before implementing changes.

I alleged in my complaint that this revision constituted a change in the nature of postal services that generally affected service on a nationwide or substantially nationwide basis within the meaning of 39 U.S.C. § 3661(b) because the revised section 126.42 eliminates the nexus between retail hours and the needs of the community.⁴ The Postal Service attempts to minimize the significance of this change. The Postal Service insists that surviving POM

⁴ Complaint at ¶ 4.

section 126.41 retains the nexus between retail hours and the needs of the community.⁵ However, if the Postal Service wished to retain a strong nexus between retail hours and the needs of the community, why did the agency remove a change in the needs of the community as a trigger for considering changes in retail hours? Moreover, why did it eliminate the important step of consulting with customers before implementing changes?

Quoting a Commission advisory opinion from 1976, the Postal Service further asserts that a POM revision does not constitute a change in service until Postal Service headquarters implements an actual change.⁶ In reality, the actions of many field offices can implement a change even without explicit direction from headquarters.

In this case, no shortage of action or implementation exists following the revision to POM section 126.42. In the San Francisco District, the Postal Service did not consider customer feedback before implementing changes, and the Postal Service implemented the changes for reasons that it has not even bothered to explain to the public.

In the limited time available to file this complaint, I was not able to research retail service changes nationwide. However, I recently discovered a sign on the door of the post office in Los Gatos, California, which is located in the Bay-Valley District, announcing that the retail hours would end at 5:00 PM, instead of 6:00 PM, starting Sunday, May 4, 2014. This notice was conspicuous because it chose a Sunday starting day — in fact, the same Sunday that appeared on the notices that the Postal Service hastily posted in the San Francisco District one business day after San Francisco District Manager David Stowe received my letter presented in Exhibit 1 of the complaint. In that letter, I explained that the notice of changes in retail hours posted at Rincon Center Station on April 1, 2014, with an effective date of April 21, 2014, did not comply

⁵ Motion at 5–6.

⁶ Motion at 5, fn. 19.

with the 30-day notice requirement in POM section 126.42. The identical starting date on the notice at the Los Gatos post office seems to be more than a coincidence. Perhaps the changes implemented on May 4, 2014, occurred throughout the Pacific Area — or even more broadly.

The Postal Service's recent actions reveal the agency's true motivation for modifying the POM: to allow postal officials to reduce retail hours expeditiously for any reason. For further confirmation, the Commission should consider the context of the POM revision. The Postal Service announced this revision during the POSTPlan advisory opinion proceeding in response to an interrogatory from the public representative asking whether the process for changing retail hours provided in former POM section 126.42 would apply to Remotely Managed Post Offices or Part-Time Post Offices.⁷ POSTPlan was "an initiative to systematically realign the hours of operation at approximately 17,700 of the more than 32,000 postal retail locations."⁸ The Postal Service revised the POM to allow the agency to reduce retail hours even if the needs of the community have not changed and to avoid the hassle of consulting first with its customers.

The Commission should afford no weight to the Postal Service's contention that POM section 126.41 retains a strong nexus between retail hours and the needs of the community. The plain language of revised POM section 126.42, the context in which the Postal Service implemented this revision, and the Postal Service's actions subsequent to the change leave little doubt about the real meaning of this disturbing change in operating policy and service. Consequently, in a major departure from past policy and practice, the Postal Service's policy for changes in retail hours no longer requires the agency to meet with customers or consider the needs of the community. This change in policy and practice constitutes a change in the nature of postal services, as customers nationwide no longer can expect retail hours that meet their needs.

⁷ Docket No. N2012-2, Tr. 1/40.

⁸ Op. N2012-2 at 3.

B. A FAILURE TO PROVIDE ADEQUATE POSTAL SERVICES VIOLATES SECTION 3661(a).

Citing 39 U.S.C. § 3661(a), my complaint alleges, in various paragraphs, that the Postal Service is failing to “provide” adequate, or adequate and efficient, postal services.⁹ The Postal Service argues that the Commission should dismiss the complaint because the complaint does not allege that the Postal Service failed to “develop and promote adequate and efficient postal services,”¹⁰ the exact language contained in section 3661(a). At one point, the Postal Service complains that I have “placed a statutory burden on the Postal Service where none exists.”¹¹ In fact, my complaint does properly allege a violation of section 3661(a).

Section 3661(a) requires the Postal Service to develop adequate and efficient postal services. Given that this requirement has existed since at least 1971, when the Postal Reorganization Act took effect, the Postal Service has had plenty of time to develop adequate and efficient postal services. We can assume that the Postal Service should have *developed* services by now that at least are adequate. Therefore, most Postal Service activities today should be focused on *promoting* adequate and efficient postal services.

The Merriam-Webster dictionary definition of “promote” is “to help (something) happen, develop, or increase.”¹² The first two parts of this definition are redundant when used in a sentence with “develop,” so the third part, “to increase,” best gives meaning to the language that Congress enacted. However, the Postal Service cannot increase something that does not exist. Consequently, if the Postal Service is not *providing* adequate and efficient services, it certainly cannot be complying with the mandate in section 3661(a) to *promote* them — i.e., to increase or improve them. For example, the revision to POM section 126.42 eliminated a Postal Service policy or practice that helped to

⁹ Complaint at ¶¶ 8, 10, 11, 12, 27, 28, and 29.

¹⁰ See, e.g., Motion at 7 and 12.

¹¹ *Id.* at 12

¹² Merriam-Webster Online Dictionary.

ensure that altered retail hours still provided adequate and efficient postal services. As a result, the Postal Service is not *promoting* adequate and efficient postal services since it is not even ensuring that it *provides* them. Similarly, when the Postal Service reduces service levels, as it did in the San Francisco District, it certainly is not promoting, or increasing, services — adequate or not.

Webster's *Ninth New Collegiate Dictionary* defines “promote” as “contribute to the growth or prosperity of.”¹³ With this definition, a literal reading of the statute does not entirely make sense because services are either adequate or not, and the Postal Service cannot contribute to the growth or prosperity of adequate services. A reasonable interpretation of the statute charges the Postal Service with improving services, causing services to grow and prosper. The Postal Service cannot cause services to grow or prosper if it is not even providing adequate services.

Far from placing “a statutory burden on the Postal Service where none exists,” my complaint holds the Postal Service to a *lower* standard than section 3661(a). My complaint merely asks the Postal Service to provide adequate and efficient services, not also to promote them. Since a failure to *provide* adequate and efficient postal services necessarily constitutes a failure to *promote* adequate and efficient postal services, my complaint properly alleges a violation of section 3661(a).

If the Commission determines that my complaint must specifically allege that the Postal Service is failing to develop and promote adequate and efficient postal services in order to allege a violation of section 3661(a), I would be willing to amend my complaint because, by reducing services and not considering the needs of the community, the Postal Service is not promoting, or increasing, services. This amendment would hold the Postal Service to a higher standard

¹³ Webster's *Ninth New Collegiate Dictionary*, 1987.

than I originally alleged. The Commission should afford a complainant leave to amend a complaint to further the interest of justice.¹⁴

C. THE COMPLAINT DOES NOT ALLEGE THAT PROCEDURAL VIOLATIONS OF THE POM IN THE SAN FRANCISCO DISTRICT PROVIDE COMMISSION JURISDICTION TO HEAR A COMPLAINT.

The Postal Service bases a substantial portion of its motion to dismiss on the premise that the complaint is flawed because the Commission does not have jurisdiction to review complaints alleging POM violations.¹⁵

In fact, my complaint does not allege that the Commission has jurisdiction to review the POM violations. I identified the POM violations to comply with 39 C.F.R. § 3030.10(a)(1), which states that a complaint must “[s]et forth the facts and circumstances that give rise to the complaint[.]” The POM violations demonstrate that the Postal Service, in addition to curtailing retail hours and collection services without regard for customer need and without providing customers an opportunity for input, cannot be bothered even to follow simple requirements for adequately notifying the public.

D. THE COMPLAINT CLEARLY IDENTIFIES AND EXPLAINS HOW THE POSTAL SERVICE ACTION OR INACTION VIOLATES SECTION 3661(a) AND (b).

Commission rules require a complaint to “[s]et forth the facts and circumstances that give rise to the complaint”¹⁶ and “identify and explain how the Postal Service action or inaction violates applicable statutory standards[.]”¹⁷ My complaint meets this standard, and the Postal Service obviously understands the exact factual and legal basis for this complaint. Without actually claiming that it does not understand the factual and legal basis for this complaint, the Postal Service nonetheless argues that the Commission should dismiss this complaint

¹⁴ A similar policy exists in Rule 15(a)(1)(2) of the *Federal Rules of Civil Procedure*.

¹⁵ See Motion at 8□12.

¹⁶ 39 C.F.R. § 3030.10(a)(1).

¹⁷ 39 C.F.R. § 3030.10(a)(2).

because the complaint fails “to allege facts sufficient to support any of [the] allegations[.]” Remarkably, the Postal Service encourages the Commission to follow the Supreme Court’s holdings in two cases that the Postal Service cited, which supposedly require a level of factual detail in notice pleading greater than my complaint provides.¹⁸

Supreme Court holdings interpreting Rule 12 of the *Federal Rules of Civil Procedure* do not apply to the Commission’s complaint process. The Commission promulgates and interprets its rules according to its own standards and consistent with due process. The Commission designed its complaint process to be accessible to aggrieved parties not represented by counsel. The Commission’s rules reflect this goal. In fact, the regulation specifying the content of complaints provides that the Commission “may waive any of the requirements listed in paragraph (a) of this section to serve the interests of justice.”¹⁹

E. THE COMMISSION SHOULD RESOLVE DURING A HEARING THE FACTUAL ISSUES THAT THE POSTAL SERVICE INTRODUCES CONCERNING SERVICE LEVELS IN THE SAN FRANCISCO DISTRICT.

The Postal Service argues that the complaint does not address “numerous” Postal Service retail facilities with PO box service and window hours that extend beyond 5:00 PM or the “abundant alternative access channels in the San Francisco District, including Contract Postal Units (CPUs), Village Post Offices (VPOs), stamp consignment retailers, and postal operations at Staples locations.”²⁰ For San Francisco, the Postal Service asserts that Golden Gate Station and Clayton Street Station close at 5:30 PM, and Pine Street Station closes at 6:00 PM.

The permanent signs at Pine Station Station indicate a 5:30 PM closing time. In addition, a document that the Postal Service provided in response to my

¹⁸ Motion at 4–5.

¹⁹ 39 C.F.R. § 3030.10(b).

²⁰ Motion at 8.

Freedom of Information Act request indicates that these three stations are slated for a new closing time of 5:00 PM, but this change is “on hold” — a status that hardly inspires confidence for customers.

Moreover, by suggesting that customers visit these three stations for PO box and retail service, the Postal Service is demonstrating a major lack of understanding about life in San Francisco. Traffic in the city is congested, and parking is limited. Customers lucky enough to find a parking space at a meter may pay rates as high as \$6.00 an hour.²¹ A quarter may buy fewer than three minutes — possibly not even enough time to park and estimate how long the line inside the post office is. Fines for parking at an expired meter range from \$64 to \$74.²² Crossing the city on public transportation to find an open post office may be time consuming and impractical. These three stations are not reasonable alternatives for many customers.

In addition, San Francisco has one Staples store. The one Village Post Office is on Treasure Island, the access to which via the Bay Bridge during the late afternoon makes parking in San Francisco look easy.

While this complaint concerns issues larger than those in the San Francisco District, these examples demonstrate the problems that customers encounter when the Postal Service unilaterally reduces services and does not consider customers’ needs.

F. THE COMPLAINT DOES NOT QUALIFY FOR THE RATE OR SERVICE INQUIRY PROCESS.

The Postal Service urges the Commission to refer this complaint to the rate or service inquiry process.²³ I understand that a referral to the rate or service inquiry process would not result in dismissal of this complaint pursuant to

²¹ www.sfmta.com/sites/default/files/maps/ParkingMeters_Citywide_052014.pdf

²² www.sfmta.com/sites/default/files/pdfs/Parking%20Fines%20Rate%20FY%202013-14.pdf

²³ Motion at 13□14.

the terms of 39 C.F.R. § 3030.13, so on this basis I would not object if the Commission referred this complaint to that process.

However, the complaint does not meet the requirements for referral provided in 39 C.F.R. § 3030.13(a). Widespread changes in retail hours affecting more than 25 retail facilities in the San Francisco District are not “isolated incidents affecting few mail users.”²⁴ Rather, they affect a “significant number of mail users[.]”²⁵ Over 1.5 million people live in the cities in the San Francisco District where the Postal Service unilaterally reduced retail hours.²⁶

Also, my complaint alleges a revision in national Postal Service policy for changes in retail hours, and this revision represents “a pattern, practice, or systemic issue that affects a significant number of mail users (or is reasonably likely to be evidence that such a pattern has begun).”²⁷

III. CONCLUSION

This complaint raises important and timely local and national policy and service issues.

The Postal Service’s motion to dismiss does not contain the agency’s usual refrain that it is suffering a financial crisis and must retain operational flexibility to implement changes in services. Financial issues probably are the reason for the changes in service hours in the San Francisco District and perhaps elsewhere, but I suspect that the Postal Service did not mention these issues for fear of undermining its argument that a strong nexus still exists between retail hours and the needs of the community.

²⁴ 39 C.F.R. § 3030.13(a).

²⁵ 39 C.F.R. § 3030.13(a)(2).

²⁶ The U.S. Census Quick Facts at *quickfacts.census.gov* estimate a 2012 population of 1,549,621 people in the cities of Mill Valley, Mountain View, Novato, Palo Alto, Petaluma, Redwood City, San Francisco, San Rafael, Santa Rosa, and Sunnyvale.

²⁷ 39 C.F.R. § 3030.13(a)(3).

A time of crisis is exactly when the agency *should* be consulting with customers. These times are challenging for the Postal Service and its customers. If the Postal Service needs to make tough choices to reduce services, the Postal Service should consider public input, not establish a policy to bypass customer input. Moreover, obtaining public input is easy. The Postal Service does not pay to send and receive mail, such as surveys, and online survey tools are cheap and easy to use. No excuse exists for not soliciting public input.

Unlike most customers nationwide, POSTPlan customers enjoyed the benefit of an advisory opinion proceeding. In that proceeding, the Commission endorsed the use of surveys to obtain customer input: “The Commission finds that a short customer survey that solicits customer preferences can be a valuable tool for determining how to implement the POSTPlan on the local level.”²⁸

The Commission also should recognize the importance in a large organization of policies and procedures that will ensure compliance with statutory requirements. A process that requires managers to consider customer input before reducing service levels almost certainly will ensure greater compliance with statutory requirements such as section 3661(a) than a process such as the one implemented in the San Francisco District that allows, if not encourages, managers to ignore their customers.

This complaint provides the Commission an opportunity to review Postal Service processes for reducing service hours and, if necessary, to direct the Postal Service, pursuant to section 3662(c), to establish a process to consider public input before changing service hours. A time of crisis is precisely the time for the Commission to seize this opportunity to protect service levels nationwide.

Respectfully submitted,

Dated: May 27, 2014

DOUGLAS F. CARLSON

²⁸ Op. N2012-2 at 40.